1990

Anderson v. : Brief of Appellee

Utah Supreme Court

S. Dee Long; attorney for appellee.
Mark S. Swan, Mark E. Medcalf; Richer, Swan & Overholt; attorneys for appellant.

IN THE SUPREME COURT OF THE

STATE OF UTAH

IN RE: ESTATE OF GLENN CLAUGHTON ANDERSON, JR., Appellee.	Supreme Court No. 900479 Category No. 16

BRIEF OF APPELLEE

APPEAL FROM THE JUDGMENT OF THE
THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
THE HONORABLE HOMER F. WILKINSON, JUDGE

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LIST OF ALL PARTIES

1. Estate of Glenn Claughton Anderson, Jr., Appellee.

2. Charter Thrift & Loan, Appellant.
(Creditor whose claim was denied by the district court sitting in probate.)

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BRIEF OF APPELLEE

STATEMENT OF JURISDICTION AND NATURE OF PROCEEDINGS

The Utah Supreme Court has jurisdiction of this appeal under Rule 3(a) of the Utah Rules of Appellate Procedure and §78-2-2(3)(J) (U.C.A. 1989). This appeal is from a final civil judgment rendered by the Third District Court in Salt Lake County sitting in probate which judgment rejected the claim of a creditor, appellant Charter Thrift & Loan (Charter), because Charter's claim had been filed in 1990 over two years after the estate had completed publication of notice to creditors under the applicable statute and because Charter had received actual notice in 1987 of the probate during the period of notice.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

AND APPLICABLE STANDARD OF REVIEW

I. WAS CHARTER ENTITLED TO MORE NOTICE THAN THE APPLICABLE STATUTE REQUIRED?

Applicable Standard of Review: Lower court judgments rendered as a matter of law are subject to appellate review without giving deference to the lower court's conclusion. Ron Case Roofing and Asphalt Paving, Inc. v. Blomquist, 773 P.2d 1382

(Utah 1989); Atlas Corp. v. Clovis National Bank, 737 P.2d 225 (Utah 1987).

II. DID DUE PROCESS REQUIRE PERSONAL WRITTEN NOTICE TO CHARTER IN ADDITION TO THE 1987 PUBLICATION NOTICE THEN REQUIRED BY STATUTE AND THE ACTUAL NOTICE GIVEN IN AUGUST AND SEPTEMBER, 1987 OF THE PROBATE, THE APPOINTMENT OF THE PERSONAL REPRESENTATIVE AND THE IDENTITY OF THE ESTATE'S ATTORNEY?

Applicable Standard of Review: Judgments rendered as a matter of law by the lower court are basically reviewed de novo on appeal. Ron Case Roofing and Asphalt Paving, Inc. v. Blomquist, 773 P.2d 1382 (Utah 1989); Atlas Corp. v. Clovis National Bank., 737 P.2d 225 (Utah 1987).

APPLICABLE CONSTITUTIONAL AND STATUTORY PROVISIONS

§75-3-801 (U.C.A. 1975): Notice to creditors. Unless notice has already been given under this section, a personal representative upon his appointment shall publish a notice once a week for three successive weeks in a newspaper of general circulation in the county announcing his appointment and address and notifying creditors of the estate to present their claims within three months after the date of the first publication of the notice or be forever barred.

U.S. Const. Amend. XIV, §1. [Citizenship - Due process of law - Equal protection.] All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws.

Utah Const. Art. I, §7. [Due process of law.] No person shall be deprived of life, liberty or property, without due process of law.

STATEMENT OF THE CASE

Glenn C. Anderson, Jr. (Anderson) died on July 19, 1987. On August 12, 1987 Anderson's will was filed for probate. By October, 1987 Anderson's personal representative and his former attorney had both orally informed Charter of Anderson's probate, the appointment of the personal representative and the identity of the estate's attorney. The required statutory notice was published and proof of publication was filed on September 24, 1987. Other creditors filed claims in 1987 and 1988. Charter did not file its claim until March, 1990 which claim was rejected by the personal representative and then by the lower court. Although there was no actual trial and there was no dispute of material fact, the lower court entered findings of fact, conclusions of law and the final order. The district court denied Charter's claim because Charter had actual notice of Anderson's death, the probate, and the appointment of the personal representative, and because the personal representative had complied with all the requirements of Section 75-3-801 (U.C.A. 1975), the probate notice statute then in force.

STATEMENT OF THE FACTS

1. Anderson died on July 19, 1987. (R. 5)

2. Probate was commenced on August 12, 1987 (R. 5) and Shelley Jones (Jones) was appointed personal representative of Anderson's estate. (R. 12)

3. Thereafter, notice to creditors was published and completed in 1987 under the applicable notice statute, §75-3-801

(U.C.A. 1975). (The statute was amended in 1989 to require individual written notice to known creditors.)

4. Some creditors filed claims against the estate in 1987 and 1988. (R. 26, 27)

5. During the period of publication, Jones talked on several occasions to representatives of Charter and informed Charter of Anderson's death, the probate, and her appointment as personal representative. (R. 70)

6. During August, 1987 a representative of Charter also contacted Anderson's former attorney, Walter P. Faber, Jr., who then informed Charter of the probate, the appointment of Jones and the identity of S. Dee Long, the attorney for the estate. (R. 72)

7. Jones did not give Charter any other notice.

8. Charter first filed a claim against Anderson's estate in March, 1990. (R. 28)

SUMMARY OF ARGUMENTS

In 1987, Jones fully complied with the probate notice statute (§75-3-801) then in effect and gave Charter actual oral notice of the probate and her appointment. The above information was also given to Charter by Anderson's former attorney in August, 1987 plus the identity of the estate's attorney, S. Dee Long, in a call initiated by Charter. Because Charter was given actual as well as the required statutory notice, Charter was not deprived of due process even though Charter did not receive individual written notice of the three month period for presenting its claim.

ARGUMENT

I. BECAUSE JONES FULLY COMPLIED WITH THE APPLICABLE NOTICE STATUTE AND IN 1987 GAVE CHARTER ACTUAL NOTICE OF THE PROBATE AND HER APPOINTMENT AND CHARTER WAS ALSO INFORMED OF THE IDENTITY OF THE ESTATE'S ATTORNEY, THERE WAS NO VIOLATION OF CHARTER'S RIGHT TO DUE PROCESS.

The only substantive issue in this case is whether Charter was denied due process because although Charter received actual and timely notice of the probate, it did not receive individual written notice to present its claim. There is no dispute that Charter had actual notice of the probate, the appointment of Jones, and the identity of the estate's attorney prior to the completion of the required statutory notice period. Charter thus had statutory as well as ample direct oral notice, and the knowledge and opportunity to file its claim well within the three month statutory claim period. However, Charter's position is that under the Due Process Clause it was entitled to personal written notice (as is now required by the statutory provision enacted two years later in 1989) to present its claim before such claim need have been filed regardless that it had actual notice and the notice statute then in effect was fully complied with by Jones.

Charter principally bases its argument on the recent United States Supreme Court case of Tulsa Professional Collection Services, Inc. v. Pope, 485 U. S. 478, 108 S. Ct. 1340 (1988), wherein the Supreme Court held that Oklahoma probate proceedings were State action and that the creditor therein was thus entitled to reasonable actual notice under the Due Process Clause of the United States Constitution. The Oklahoma statute provided that

creditors must present claims within two months after publication or be forever barred. In the Pope case, the creditor had no actual notice of the probate during the two month period and therefore did not present a claim during that period. The Supreme Court in the Pope case does not prescribe the type or extent of the notice that should be given to comply with due process in probate cases where State action is involved, but states that "whether a particular method of notice is reasonable depends on the particular circumstances." 108 S.Ct. at 1344.

In the Pope case, after an extended discussion of examples of State actions wherein the Due Process Clause becomes applicable, the Supreme Court stated in regard to Oklahoma's probate non-claim statute that:

> . . . the Due Process Clause requires that Appellant [the creditor] be given "[n]otice by mail or other means as certain to insure actual notice." Mennonite, supra, at 800, 103 S.Ct., at 2712.

The Supreme Court in the Pope case cited two of its earlier decisions, Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950), and Mennonite Board of Missions v. Adams, 462 U.S. 791, 103 S.Ct. 2706, 77 L.Ed.2d 180 (1983) in regard to due process considerations in cases of notice by publication. In the Mennonite case the Supreme Court quoted its decision in the Mullane case and stated that where there is State action . . . "notice [must be] reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." . . . 103 S.Ct. @ 2709.

It is undisputed in this case that Charter had actual notice from at least two sources of the commencement of the probate proceedings, the appointment of the personal representative, and the identity of the estate's attorney at the beginning of the statutory notice period. It is also undisputed that Charter initiated the contact in August, 1987 with the decedent's former attorney wherein Charter received the information on which it could easily have filed a claim within the statutory period if it had chosen to do so. Under the facts of this case, Charter was given reasonable actual notice prior to the time the statutory notice period began, and therefore the oral notice given was reasonable and fulfilled all due process requirements as stated by the Supreme Court in the Pope, Mennonite and Mullane cases.

CONCLUSION

Because Charter had actual notice as well as the statutory notice required at the time, the lower court properly determined that under the undisputed facts there was no additional notice required and Charter was not deprived of due process. The judgment of the lower court should be affirmed.

DATED this 20 day of May, 1991.

S. DEE LONG
Attorney for Appellee

CERTIFICATE OF MAILING

I hereby certify that I mailed four copies of the foregoing to Mark S. Swan and Mark E. Medcalf, 311 South State, Suite 350, Salt Lake City, UT 84111, postage prepaid, this 21 day of May, 1991.

ADDENDUM

A. FINDINGS OF FACT AND CONCLUSIONS OF LAW

B. ORDER

C. AFFIDAVIT OF JONES 7/16/90

D. AFFIDAVIT OF FABER 7/16/90

E. TULSA PROFESSIONAL COLLECTION SERVICES VS. POPE, 485 U.S. 478, 108 S.Ct. 1340 (1988).

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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

IN THE MATTER OF THE ESTATE OF, :	FINDINGS OF FACT AND CONCLUSIONS OF LAW
GLENS CLAUGHTON ANDERSON, JR., :	873900816
:	Probate No. P-87-816
Deceased.	Judge Homer Wilkinson

The Petition of Allowance of Claim of Charter Thrift & Loan against the estate of the above-named Decedent, and the Personal Representative's denial of that claim came on for hearing on the 25th day of July, 1990, the Honorable Homer F. Wilkinson presiding. Creditor Charter Thrift & Loan appeared through their counsel, Mark S. Swan of the law firm **RICHER, SWAN & OVERHOLT, P.C.**, and the Personal Representative appeared through her counsel, S. Dee Long. The Court having considered the memoranda and affidavits submitted by the various parties, and being fully advised herein, now makes its:

FINDINGS OF FACT

1. The Decedent, Glenn Claughton Anderson, Jr., died on the 19th day of July, 1987 and was a resident of Salt Lake County, State of Utah.

2. A probate was filed in the Third Judicial District Court of Salt Lake County, State of Utah on the 12th day of August, 1987, for the probate of Decedent's Will.

3. Decedent's daughter, Shelly J. Jones, was appointed Personal Representative of said estate.

4. Said Personal Representative caused a notice to creditors to be published for three (3) consecutive weeks in accordance with Utah Code Annotated, §75-3-801.

5. Said Personal Representative, Shelly J. Jones, personally contacted Charter Thrift & Loan by telephone and informed him of her father's death, and that a probate had been filed, and that she had been appointed Personal Representative of her father's estate.

6. Charter Thrift & Loan did not have actual notice of the publication of the Notice to creditors to submit claims nor actual notice of the running of the claim bar period.

7. Charter Thrift & Loan did not file a creditor's claim within the three (3) months of publication as required by U.C.A., §75-3-801, and did not file a creditor's claim until March 1, 1990.

From the forgoing Findings of Fact, the Court now makes and inters its:

CONCLUSIONS OF LAW

1. The Court has jurisdiction of both the parties and the subject matter.

2. The Personal Representative of the estate met all requirements of the Utah Uniform Probate Code in giving notice to creditors.

3. The constitutional due process rights of the creditor, Charter Thrift & Loan, were not violated because said creditor had received actual notice of the Decedent's death, the filing of the probate, and the appointment of Shelly J. Jones as Personal Representative.

4. The creditor's claim of Charter Thrift & Loan was not made within the statutory three month time period of the date of first publication of notice to creditors as required by law, and is thus forever barred against the estate, the personal representative, and the heirs and devisees of the decedent.

DATED this 4 day of ~~August~~ Sept, 1990.

BY THE COURT:

HONORABLE HOMER F. WILKINSON
District Court Judge

APPROVED AS TO FORM:

S. Dee Long

CERTIFICATE OF SERVICE

I hereby certify that on the 4 day of Sept, 1990, I caused a true and correct copy of the foregoing to be served upon the following parties by placing the same in the United States Mails, postage prepaid, addressed as follows:

Shelley J. Jones, Personal Representative
2939 Brookburn Drive
Salt Lake City, Utah 84109

S. Dee Long
2102 East 3300 South
Salt Lake City, Utah 84109
Attorney for Personal Representative

(dlp. Clerk)

ch730700.c90

Mark S. Swan - 3873
Mark E. Medcalf - 5404
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A Professional Corporation
311 South State, Suite 350
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Telephone: (801)539-8632
Attorneys for Plaintiff
Copper State Thrift & Loan

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

IN THE MATTER OF THE ESTATE OF, : ORDER

GLENS CLAUGHTON ANDERSON, JR., : 8739008 16

: Probate No. P-87-816
Deceased. Judge Homer Wilkinson

The hearing on the Petition of Charter Thrift & Loan for Allowance of Claims, and the denial of said claim by the Personal Representative of the estate, came on for hearing on the 25th day of July, 1990, before the Honorable Homer F. Wilkinson. Charter Thrift & Loan appeared by and through its counsel, Mark S. Swan of the law firm **RICHER, SWAN & OVERHOLT, P.C.** The Personal Representative of the estate appeared through her counsel and counsel for the estate, S. Dee Long. The Court having considered all documents on file herein, having reviewed the memoranda and affidavits submitted by the parties, having heard argument of counsel, having heretofore signed and filed its Findings of Fact

and Conclusions of Law, and being otherwise fully advised in the premises, it is hereby:

ORDERED, ADJUDGED AND DECREED that the creditor's claim of Charter Thrift & Loan against the above-named Decedent's estate is hereby disallowed and forever barred against the estate, the Personal Representative and the heirs and devisees of the decedent.

DATED this 4 day of ~~August~~ Sept, 1990.

BY THE COURT:

HONORABLE HOMER F. WILKINSON
District Court Judge

APPROVED AS TO FORM:

S. Dee Long

CERTIFICATE OF SERVICE

I hereby certify that on the 4 day of ~~Aug~~ Sept, 1990, I caused a true and correct copy of the foregoing to be served upon the following parties by placing the same in the United States Mails, postage prepaid, addressed as follows:

Shelley J. Jones, Personal Representative
2939 Brookburn Drive
Salt Lake City, Utah 84109

S. Dee Long
2102 East 3300 South
Salt Lake City, Utah 84109
Attorney for Personal Representative

ch730700.c90

(Dep. Clerk)

S. DEE LONG (A1990)
Attorney at Law
2102 East 3300 South
Salt Lake City, UT 84109
Telephone: 486-5634

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR THE

COUNTY OF SALT LAKE, STATE OF UTAH

IN THE MATTER OF THE ESTATE OF:	
GLENN CLAUGHTON ANDERSON, JR.,	AFFIDAVIT 87-816 Probate No. ~~P97816~~
Deceased.	JUDGE HOMER F. WILKINSON

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

SHELLEY J. JONES, being first duly sworn, deposes and states as follows:

1. Following my father's death I had several conversations with representatives of Charter Thrift & Loan.

2. In some of those telephone conversations I specifically stated to said representatives that my father's estate had been placed in probate and that I had been appointed the Personal Representative of the estate.

3. These telephone conversations wherein I indicated that I was a Personal Representative took place within two months of my father's death.

DATED this 16th day of July, 1990.

SHELLEY J. JONES

Personally appeared before me, the undersigned Notary Public, SHELLEY J. JONES, who after first being sworn stated that she has read the foregoing and that the contents thereof are true to the best of her own personal knowledge and belief, and she then signed the same in my presence this 16th day of July, 1990.

Barbara W. Thurgood
Notary Public

Residing at: SL Co., UT

My Commission Expires:

Notary Public
BARBARA W THURGOOD
2102 East 3300 South
Salt Lake City, Utah 84109
My Commission Expires
November 10 1992
State of Utah

S. DEE LONG (A1990)
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Telephone: 486-5634

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR THE

COUNTY OF SALT LAKE, STATE OF UTAH

IN THE MATTER OF THE ESTATE OF: GLENN CLAUGHTON ANDERSON, JR., Deceased.	AFFIDAVIT Probate No. ~~P97816~~ P87-516 8739008 JUDGE HOMER F. WILKINSON

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

WALTER P. FABER, JR., being first duly sworn, deposes and states as follows:

1. Affiant is an attorney licensed to practice in the State of Utah.

2. I was legal counsel for Glenn Claughton Anderson, Jr. prior to his death.

3. Following the death of Mr. Anderson on July 19, 1987 I had telephone conversations with representatives of Charter Thrift & Loan who telephoned in August, 1987 wherein I informed them that Mr. Anderson's estate had been placed in probate, that Shelley J. Jones had been appointed the Personal Representative of the estate, and that S. Dee Long was the attorney for the estate.

DATED this 16th day of July, 1990.

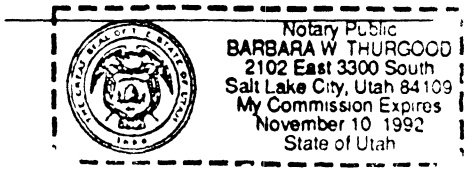
Walter P. Faber, Jr.
WALTER P. FABER, JR.

Personally appeared before me, the undersigned Notary Public, WALTER P. FABER, JR., who after first bei' · sworn stated that he has read the foregoing and that the contents thereof are true to the best of his personal knowledge and belief, and he then signed the same in my presence this 16 day of July, 1990.

Barbara W Thurgood
Notary Public

Residing at: SLC, UT

My Commission Expires:



will derive any solace from the knowledge that although the practice of their religion will become "more difficult" as a result of the Government's actions, they remain free to maintain their religious beliefs. Given today's ruling, that freedom amounts to nothing more than the right to believe that their religion will be destroyed. The safeguarding of such a hollow freedom not only makes a mockery of the " 'policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the[ir] traditional religions,' " *ante* at, 1327–1328 (quoting AIRFA), it fails utterly to accord with the dictates of the First Amendment.

I dissent.

TULSA PROFESSIONAL COLLECTION SERVICES, INC., Appellant

v.

JoAnne POPE, Executrix of the Estate of H. Everett Pope, Jr., Deceased.

No. 86–1961.

Argued March 2, 1988.

Decided April 19, 1988.

Creditor's assignee instituted suit to compel estate's payment of expenses of decedent's last illness. The District Court, Tulsa County, Robert D. Frank, J., held claim was time barred, and assignee appealed. The Court of Appeals affirmed, and assignee sought review. The Oklahoma Supreme Court, 733 P.2d 396, Lavender, J., affirmed, and assignee appealed. The Supreme Court, Justice O'Connor, held that due process required actual notice to reasonably ascertainable creditors of est that nonclaim statute had began to r

Reversed and remanded.

Justice Blackmun concurred in res

Chief Justice Rehnquist dissented : filed opinion.

1. Constitutional Law ⇐277(1)

Creditor's cause of action against d dent's estate for unpaid bill is protec property interest, for due process p poses. U.S.C.A. Const.Amend. 14.

2. Constitutional Law ⇐254(2, 4)

Fourteenth Amendment only prot property interests from deprivation state action; private use of state sa tioned private remedies or procedures d not rise to level of state action, but w private parties make use of state pr dures with overt, significant assistance state officials, state action may be fou U.S.C.A. Const.Amend. 14.

3. Constitutional Law ⇐308

Due process does not require that tential plaintiffs be given notice of impe ing expiration of period of limitati U.S.C.A. Const.Amend. 14.

4. Constitutional Law ⇐254(2)
Executors and Administrators ⇐2

Oklahoma's nonclaim statute is self-executing, in that probate court's volvement in appointing executor is ne sary to activate time bar, and thus th was sufficient state action to give rise due process requirement of actual mail tice to known or reasonably ascertain creditors, rather than mere notice by pu cation, which was sufficient only for cr tors who are not reasonably ascertain or who held merely conjectural claims. O.S.1981, §§ 331, 333; U.S.C.A. Co Amend. 14.

Syllabus *

Under the nonclaim provision of C homa's probate code, creditors' cla

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the

against an estate are generally barred unless they are presented to the executor or executrix within two months of the publication of notice of the commencement of probate proceedings. Appellee executrix published the required notice in compliance with the terms of the nonclaim statute and a probate court order, but appellant, the assignee of a hospital's claim for expenses connected with the decedent's final illness, failed to file a timely claim. For this reason, the probate court denied appellant's application for payment, and both the State Court of Appeals and Supreme Court affirmed, rejecting appellant's contention that, in failing to require more than publication notice, the nonclaim statute violated due process. That contention was based upon *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865, which held that state action that adversely affects property interests must be accompanied by such notice as is reasonable under the particular circumstances, balancing the State's interest and the due process interests of individuals, and *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 103 S.Ct. 2706, 77 L.Ed.2d 180, which generally requires actual notice to an affected party whose name and address are "reasonably ascertainable."

Held: If appellant's identity as a creditor was known or "reasonably ascertainable" by appellee (a fact which cannot be determined from the present record), the Due Process Clause of the Fourteenth Amendment, as interpreted by *Mullane* and *Mennonite*, requires that appellant be given notice by mail or such other means as is certain to ensure actual notice. Appellant's claim is properly considered a property interest protected by the Clause. Moreover, the nonclaim statute is not simply a self-executing statute of limitations. *Texaco, Inc. v. Short*, 454 U.S. 516, 102 S.Ct. 781, 70 L.Ed.2d 738, distinguished. Rather, the probate court's intimate involvement throughout the probate proceedings—particularly the court's activation of the statute's time bar by the appointment of an executor or executrix—is so pervasive and substantial that it must be considered state action. Nor can there be any doubt that the statute may "adversely affect" protected property interests, since untimely claims such as appellant's are completely extinguished. On balance, satisfying creditors' substantial, practical need for actual notice in the probate setting is not so cumbersome or impracticable as to unduly burden the State's undeniably legitimate interest in the expeditious resolution of the proceedings, since mail service (which is already routinely provided at several points in the probate process) is inexpensive, efficient, and reasonably calculated to provide actual notice, and since publication notice will suffice for creditors whose identities are not ascertainable by reasonably diligent efforts or whose claims are merely conjectural. Pp. 1344–1348.

733 P.2d 396 (Okl.1986), reversed and remanded.

O'CONNOR, J., delivered the opinion of the Court, in which BRENNAN, WHITE, MARSHALL, STEVENS, SCALIA, and KENNEDY, JJ., joined. BLACKMUN, J., concurred in the result. REHNQUIST, C.J., filed a dissenting opinion.

Randall E. Rose, Tulsa, Okl., for appellant.

Phillip K. Smith, Tulsa, Okl., for appellee.

Justice O'CONNOR delivered the opinion of the Court.

This case involves a provision of Oklahoma's probate laws requiring claims "arising upon a contract" generally to be presented to the executor or executrix of the estate within 2 months of the publication of a notice advising creditors of the commencement of probate proceedings.

porter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

Okla.Stat., Tit. 58, § 333 (1981). The question presented is whether this provision of notice solely by publication satisfies the Due Process Clause.

I

Oklahoma's probate code requires creditors to file claims against an estate within a specified time period, and generally bars untimely claims. *Ibid.* Such "nonclaim statutes" are almost universally included in state probate codes. See Uniform Probate Code § 3–801, 8 U.L.A. 351 (1983); Falender, Notice to Creditors in Estate Proceedings: What Process is Due?, 63 N.C.L.Rev. 659, 667–668 (1985). Giving creditors a limited time in which to file claims against the estate serves the State's interest in facilitating the administration and expeditious closing of estates. See, *e.g.*, *State ex rel. Central State Griffin Memorial Hospital v. Reed*, 493 P.2d 815, 818 (Okla.1972). Nonclaim statutes come in two basic forms. Some provide a relatively short time period, generally 2 to 6 months, that begins to run after the commencement of probate proceedings. Others call for a longer period, generally 1 to 5 years, that runs from the decedent's death. See Falender, *supra*, at 664–672. Most States include both types of nonclaim statutes in their probate codes, typically providing that if probate proceedings are not commenced and the shorter period therefore never is triggered, then claims nonetheless may be barred by the longer period. See, *e.g.*, Ark.Code Ann. § 28–50–101(a), (d) (1987) (3 months if probate proceedings commenced; 5 years if not); Idaho Code § 15–3–803(a)(1), (2) (1979) (4 months; 3 years); Mo.Rev.Stat. § 473.360(1), (3) (1986) (6 months; 3 years). Most States also provide that creditors are to be notified of the requirement to file claims imposed by the nonclaim statutes solely by publication. See Uniform Probate Code § 3–801, 8 U.L.A. 351 (1983); Falender, *supra*, at 660, n. 7 (collecting statutes). Indeed, in most jurisdictions it is the publication of notice that triggers the nonclaim statute. The Uniform Probate Code, for example, provides that creditors have 4 months from publication in which to file claims. Uniform Probate Code § 3–801, 8 U.L.A. 351 (1983). See also, *e.g.*, Ariz.Rev.Stat.Ann. § 14–3801 (1975); Fla. Stat. § 733.701 (1987); Utah Code Ann. § 75–3–801 (1978).

The specific nonclaim statute at issue in this case, Okla.Stat., Tit. 58, § 333 (1981), provides for only a short time period and is best considered in the context of Oklahoma probate proceedings as a whole. Under Oklahoma's probate code, any party interested in the estate may initiate probate proceedings by petitioning the court to have the will proved. § 22. The court is then required to set a hearing date on the petition, § 25, and to mail notice of the hearing "to all heirs, legatees and devisees, at their places of residence," §§ 25, 26. If no person appears at the hearing to contest the will, the court may admit the will to probate on the testimony of one of the subscribing witnesses to the will. § 30. After the will is admitted to probate, the court must order appointment of an executor or executrix, issuing letters testamentary to the named executor or executrix if that person appears, is competent and qualified, and no objections are made. § 101.

Immediately after appointment, the executor or executrix is required to "give notice to the creditors of the deceased." § 331. Proof of compliance with this requirement must be filed with the court. § 332. This notice is to advise creditors that they must present their claims to the executor or executrix within 2 months of the date of the first publication. As for the method of notice, the statute requires only publication: "[S]uch notice must be published in some newspaper in [the] county once each week for two (2) consecutive weeks." § 331. A creditor's failure to file a claim within the 2–month period generally bars it forever. § 333. The nonclaim statute does provide certain exceptions, however. If the creditor is out of State, then a claim "may be presented at any time before a decree of distribution is entered." § 333. Mortgag-

es and debts not yet due are also excepted from the 2-month time limit.

This shorter type of nonclaim statute is the only one included in Oklahoma's probate code. Delays in commencement of probate proceedings are dealt with not through some independent, longer period running from the decedent's death, see, *e.g.*, Ark. Code Ann. § 28-50-101(d) (1987), but by shortening the notice period once proceedings have started. Section 331 provides that if the decedent has been dead for more than 5 years, then creditors have only 1 month after notice is published in which to file their claims. A similar 1-month period applies if the decedent was intestate. § 331.

II

H. Everett Pope, Jr. was admitted to St. John Medical Center, a hospital in Tulsa, Oklahoma, in November 1978. On April 2, 1979, while still at the hospital, he died testate. His wife, appellee JoAnne Pope, initiated probate proceedings in the District Court of Tulsa County in accordance with the statutory scheme outlined above. The court entered an order setting a hearing. Record 8. After the hearing the court entered an order admitting the will to probate and, following the designation in the will, *id.*, at 2, named appellee as the executrix of the estate. *Id.*, at 12. Letters testamentary were issued, *id.*, at 13, and the court ordered appellee to fulfill her statutory obligation by directing that she "immediately give notice to creditors." *Id.*, at 14. Appellee published notice in the Tulsa Daily Legal News for 2 consecutive weeks beginning July 17, 1979. The notice advised creditors that they must file any claim they had against the estate within 2 months of the first publication of the notice. *Id.*, at 16.

Appellant Tulsa Professional Collection Services, Inc., is a subsidiary of St. John Medical Center and the assignee of a claim for expenses connected with the decedent's long stay at that hospital. Neither appellant, nor its parent company, filed a claim with appellee within the 2-month time period following publication of notice. In October 1983, however, appellant filed an Application for Order Compelling Payment of Expenses of Last Illness. *Id.*, at 28. In making this application, appellant relied on Okla. Stat., Tit. 58, § 594 (1981), which indicates that an executrix "must pay ... the expenses of the last sickness." Appellant argued that this specific statutory command made compliance with the 2-month deadline for filing claims unnecessary. The District Court of Tulsa County rejected this contention, ruling that even claims pursuant to § 594 fell within the general requirements of the nonclaim statute. Accordingly, the court denied appellant's application. App. 3.

The District Court's reading of § 594's relationship to the nonclaim statute was affirmed by the Oklahoma Court of Appeals. App. 7. Appellant then sought rehearing, arguing for the first time that the nonclaim statute's notice provisions violated due process. In a supplemental opinion on rehearing the Court of Appeals rejected the due process claim on the merits. *Id.*, at 15.

Appellant next sought review in the Supreme Court of Oklahoma. That court granted certiorari and, after review of both the § 594 and due process issues, affirmed the Court of Appeals' judgment. With respect to the federal issue, the court relied on *Estate of Busch v. Ferrell-Duncan Clinic, Inc.*, 700 S.W.2d 86, 88-89 (Mo. 1985), to reject appellant's contention that our decisions in *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950), and *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 103 S.Ct. 2706, 77 L.Ed.2d 180 (1983), required more than publication notice. 733 P.2d 396 (1987). The Supreme Court reasoned that the function of notice in probate proceedings was not to " 'make a creditor a party to the proceeding' " but merely to " 'notif[y] him that he may become one if he wishes.' " *Id.*, at 400 (quoting *Estate of Busch*, 700 S.W.2d, at 88). In addition, the

court distinguished probate proceedings because they do not directly adjudicate the creditor's claims. 733 P.2d, at 400–401. Finally, the court agreed with *Estate of Busch* that nonclaim statutes were self-executing statutes of limitations, because they "ac[t] to cut off potential claims against the decedent's estate by the passage of time," and accordingly do not require actual notice. 733 P.2d, at 401. See also *Gibbs v. Estate of Dolan*, 146 Ill.App. 3d 203, 100 Ill.Dec. 61, 496 N.E.2d 1126 (1986) (rejecting due process challenge to nonclaim statute); *Gano Farms, Inc. v. Estate of Kleweno*, 2 Kan.App.2d 506, 582 P.2d 742 (1978) (same); *Chalaby v. Driskell*, 237 Or. 245, 390 P.2d 632 (1964) (same); *William B. Tanner Co. v. Estate of Fessler*, 100 Wis.2d 437, 302 N.W.2d 414 (1981) (same); *New York Merchandise Co. v. Stout*, 43 Wash.2d 825, 264 P.2d 863 (1953) (same). This conclusion conflicted with that reached by the Nevada Supreme Court in *Continental Insurance Co. v. Moseley*, 100 Nev. 337, 683 P.2d 20 (1984), after our decision remanding the case for reconsideration in light of *Mennonite, supra*. 463 U.S. 1202, 103 S.Ct. 3530, 77 L.Ed.2d 1383 (1983). In *Moseley*, the Nevada Supreme Court held that in this context due process required "more than service by publication." *Id.*, at 338, 683 P.2d, at 21. We noted probable jurisdiction, 484 U.S. ——, 108 S.Ct. 62, 98 L.Ed.2d 26 (1987), and now reverse and remand.

III

Mullane v. Central Hanover Bank & Trust Co., supra, 339 U.S., at 314, 70 S.Ct., at 657, established that state action affecting property must generally be accompanied by notification of that action: "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." In the years since *Mullane* the Court has adhered to these principles, balancing the "interest of the State" and "the individual interest sought to be protected by the Fourteenth Amendment." *Ibid.* The focus is on the reasonableness of the balance, and, as *Mullane* itself made clear, whether a particular method of notice is reasonable depends on the particular circumstances.

The Court's most recent decision in this area is *Mennonite, supra*, which involved the sale of real property for delinquent taxes. State law provided for tax sales in certain circumstances and for a 2-year period following any such sale during which the owner or any lienholder could redeem the property. After expiration of the redemption period, the tax sale purchaser could apply for a deed. The property owner received actual notice of the tax sale and the redemption period. All other interested parties were given notice by publication. 462 U.S., at 792–794, 103 S.Ct., at 2708–2709. In *Mennonite*, a mortgagee of property that had been sold and on which the redemption period had run complained that the State's failure to provide it with actual notice of these proceedings violated due process. The Court agreed, holding that "actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of *any* party, whether unlettered or well versed in commercial practice, if its name and address are reasonably ascertainable." *Id.*, at 800, 103 S.Ct., at 2712 (emphasis in original). Because the tax sale had "immediately and drastically diminishe[d] the value of [the mortgagee's] interest," *id.*, at 798, 103 S.Ct., at 2711, and because the mortgagee could have been identified through "reasonably diligent efforts," *id.*, at 798, n. 4, 103 S.Ct., at 2711, n. 4, the Court concluded that due process required that the mortgagee be given actual notice.

[1] Applying these principles to the case at hand leads to a similar result. Appellant's interest is an unsecured claim, a cause of action against the estate for an unpaid bill. Little doubt remains that such

an intangible interest is property protected by the Fourteenth Amendment. As we wrote in *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428, 102 S.Ct. 1148, 1154, 71 L.Ed.2d 265 (1982), this question "was affirmatively settled by the *Mullane* case itself, where the Court held that a cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause." In *Logan*, the Court held that a cause of action under Illinois' Fair Employment Practices Act was a protected property interest, and referred to the numerous other types of claims that the Court had previously recognized as deserving due process protections. See *id.*, at 429–431, and nn. 4–5, 102 S.Ct., at 1154–1155, and nn. 4–5. Appellant's claim, therefore, is properly considered a protected property interest.

[2] The Fourteenth Amendment protects this interest, however, only from a deprivation by state action. Private use of state sanctioned private remedies or procedures does not rise to the level of state action. See, *e.g., Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 98 S.Ct. 1729, 56 L.Ed.2d 185 (1978). Nor is the State's involvement in the mere running of a general statute of limitation generally sufficient to implicate due process. See *Texaco, Inc. v. Short*, 454 U.S. 516, 102 S.Ct. 781, 70 L.Ed.2d 738 (1982). See also *Flagg Bros., Inc. v. Brooks, supra*, 436 U.S., at 166, 98 S.Ct., at 1738. But when private parties make use of state procedures with the overt, significant assistance of state officials, state action may be found. See, *e.g., Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 102 S.Ct. 2744, 73 L.Ed.2d 482 (1982); *Sniadach v. Family Finance Corp.*, 395 U.S. 337, 89 S.Ct. 1820, 23 L.Ed.2d 349 (1969). The question here is whether the State's involvement with the nonclaim statute is substantial enough to implicate the Due Process Clause.

[3] Appellee argues that it is not, contending that Oklahoma's nonclaim statute is a self-executing statute of limitations. Relying on this characterization, appellee then points to *Short, supra*. Appellee's reading of *Short* is correct—due process does not require that potential plaintiffs be given notice of the impending expiration of a period of limitations—but in our view, appellee's premise is not. Oklahoma's nonclaim statute is not a self-executing statute of limitations.

It is true that nonclaim statutes generally possess some attributes of statutes of limitations. They provide a specific time period within which particular types of claims must be filed and they bar claims presented after expiration of that deadline. Many of the state court decisions upholding nonclaim statutes against due process challenges have relied upon these features and concluded that they are properly viewed as statutes of limitations. See, *e.g., Estate of Busch v. Ferrell-Duncan Clinic, Inc.*, 700 S.W.2d, at 89; *William B. Tanner Co. v. Estate of Fessler*, 100 Wis.2d 437, 302 N.W.2d 414 (1981).

As we noted in *Short*, however, it is the "self-executing feature" of a statute of limitations that makes *Mullane* and *Mennonite* inapposite. See 454 U.S., at 533, 536, 102 S.Ct., at 794, 796. The State's interest in a self-executing statute of limitations is in providing repose for potential defendants and in avoiding stale claims. The State has no role to play beyond enactment of the limitations period. While this enactment obviously is state action, the State's limited involvement in the running of the time period generally falls short of constituting the type of state action required to implicate the protections of the Due Process Clause.

[4] Here, in contrast, there is significant state action. The probate court is intimately involved throughout, and without that involvement the time bar is never activated. The nonclaim statute becomes operative only after probate proceedings have been commenced in state court. The court must appoint the executor or executrix before notice, which triggers the time bar, can be given. Only after this court

appointment is made does the statute provide for any notice; § 331 directs the executor or executrix to publish notice "immediately" after appointment. Indeed, in this case, the District Court reinforced the statutory command with an order expressly requiring appellee to "immediately give notice to creditors." The form of the order indicates that such orders are routine. Record 14. Finally, copies of the notice and an affidavit of publication must be filed with the court. § 332. It is only after all of these actions take place that the time period begins to run, and in every one of these actions, the court is intimately involved. This involvement is so pervasive and substantial that it must be considered state action subject to the restrictions of the Fourteenth Amendment.

Where the legal proceedings themselves trigger the time bar, even if those proceedings do not necessarily resolve the claim on its merits, the time bar lacks the self-executing feature that *Short* indicated was necessary to remove any due process problem. Rather, in such circumstances, due process is directly implicated and actual notice generally is required. Cf. *Mennonite*, 462 U.S., at 793–794, 103 S.Ct., at 2708–2709 (tax sale proceedings trigger 2-year redemption period); *Logan v. Zimmerman Brush Co.*, *supra*, 455 U.S., at 433, 437, 102 S.Ct., at 1156, 1158 (claim barred if no hearing held 120 days after action commenced); *City of New York v. New York, N.H. & H.R. Co.*, 344 U.S. 293, 294, 73 S.Ct. 299, 300, 97 L.Ed. 333 (1953) (bankruptcy proceedings trigger specific time period in which creditors' claims must be filed). Our conclusion that the Oklahoma nonclaim statute is not a self-executing statute of limitations makes it unnecessary to consider appellant's argument that a 2-month period is somehow unconstitutionally short. See Tr. of Oral Arg. 22 (advocating constitutional requirement that the States provide at least 1 year). We also have no occasion to consider the proper characterization of nonclaim statutes that run from the date of death, and which generally provide for longer time periods, ranging from 1 to 5 years. See Falender, 63 N.C.L.Rev., at 667–669. In sum, the substantial involvement of the probate court throughout the process leaves little doubt that the running of Oklahoma's nonclaim statute is accompanied by sufficient government action to implicate the Due Process Clause.

Nor can there be any doubt that the nonclaim statute may "adversely affect" a protected property interest. In appellant's case, such an adverse affect is all too clear. The entire purpose and effect of the nonclaim statute is to regulate the timeliness of such claims and to forever bar untimely claims, and by virtue of the statute, the probate proceedings themselves have completely extinguished appellant's claim. Thus, it is irrelevant that the notice seeks only to advise creditors that they may become parties rather than that they are parties, for if they do not participate in the probate proceedings, the nonclaim statute terminates their property interests. It is not necessary for a proceeding to directly adjudicate the merits of a claim in order to "adversely affect" that interest. In *Mennonite* itself, the tax sale proceedings did not address the merits of the mortgagee's claim. Indeed, the tax sale did not even completely extinguish that claim, it merely "diminishe[d] the value" of the interest. 462 U.S., at 798, 103 S.Ct., at 2711. Yet the Court held that due process required that the mortgagee be given actual notice of the tax sale. See also *Memphis Light, Gas & Water Division v. Craft*, 436 U.S. 1, 98 S.Ct. 1554, 56 L.Ed.2d 30 (1978) (termination of utility service); *Schroeder v. City of New York*, 371 U.S. 208, 83 S.Ct. 279, 9 L.Ed.2d 255 (1962) (condemnation proceeding); *City of New York v. New York, N.H. & H.R. Co.*, *supra* (bankruptcy code's requirement of "reasonable notice" requires actual notice of deadline for filing claims).

In assessing the propriety of actual notice in this context consideration should be given to the practicalities of the situation and the effect that requiring actual notice may have on important state interests.

Mennonite, supra, 462 U.S., at 798–799, 103 S.Ct., at 2711–2712; *Mullane*, 339 U.S., at 313–314, 70 S.Ct., at 656–657. As the Court noted in *Mullane*, "[c]hance alone brings to the attention of even a local resident an advertisement in small type inserted in the back pages of a newspaper." *Id.*, at 315, 70 S.Ct., at 658. Creditors, who have a strong interest in maintaining the integrity of their relationship with their debtors, are particularly unlikely to benefit from publication notice. As a class, creditors may not be aware of a debtor's death or of the institution of probate proceedings. Moreover, the executor or executrix will often be, as is the case here, a party with a beneficial interest in the estate. This could diminish an executor's or executrix's inclination to call attention to the potential expiration of a creditor's claim. There is thus a substantial practical need for actual notice in this setting.

At the same time, the State undeniably has a legitimate interest in the expeditious resolution of probate proceedings. Death transforms the decedent's legal relationships and a State could reasonably conclude that swift settlement of estates is so important that it calls for very short time deadlines for filing claims. As noted, the almost uniform practice is to establish such short deadlines, and to provide only publication notice. See, *e.g.*, Ariz.Rev.Stat.Ann. § 14–3801 (1975); Ark. Code Ann. § 28–50–101(a) (1987); Fla.Stat. § 733.701 (1987); Idaho Code § 15–3–803(a) (1979); Mo.Stat. § 473.360(1) (1986); Utah Code Ann. § 75–3–801 (1978). See also Uniform Probate Code § 3–801, 8 U.L.A. 351 (1983); Falender, *supra*, at 660, n. 7 (collecting statutes). Providing actual notice to known or reasonably ascertainable creditors, however, is not inconsistent with the goals reflected in nonclaim statutes. Actual notice need not be inefficient or burdensome. We have repeatedly recognized that mail service is an inexpensive and efficient mechanism that is reasonably calculated to provide actual notice. See, *e.g.*, *Mennonite, supra*, 462 U.S., at 799, 800, 103 S.Ct., at 2711, 2712; *Greene v. Lindsey*, 456 U.S. 444, 455, 102 S.Ct. 1874, 1880, 72 L.Ed.2d 249 (1982); *Mullane, supra*, 339 U.S., at 319, 70 S.Ct., at 659. In addition, *Mullane* disavowed any intent to require "impracticable and extended searches ... in the name of due process." 339 U.S., at 317–318, 70 S.Ct., at 658–659. As the Court indicated in *Mennonite*, all that the executor or executrix need do is make "reasonably diligent efforts," 462 U.S., at 798, n. 4, 103 S.Ct., at 2711, n. 4, to uncover the identities of creditors. For creditors who are not "reasonably ascertainable," publication notice can suffice. Nor is everyone who may conceivably have a claim properly considered a creditor entitled to actual notice. Here, as in *Mullane*, it is reasonable to dispense with actual notice to those with mere "conjectural" claims. 339 U.S., at 317, 70 S.Ct., at 659.

On balance then, a requirement of actual notice to known or reasonably ascertainable creditors is not so cumbersome as to unduly hinder the dispatch with which probate proceedings are conducted. Notice by mail is already routinely provided at several points in the probate process. In Oklahoma, for example, § 26 requires that "heirs, legatees, and devisees" be mailed notice of the initial hearing on the will. Accord Uniform Probate Code § 3–403, 8 U.L.A. 274 (1983). Indeed, a few States already provide for actual notice in connection with short nonclaim statutes. See, *e.g.*, Calif. Prob. Code Ann. §§ 9050, 9100 (Supp.1988); Nev.Rev.Stat. §§ 147.010, 155.010, 155.020 (1987); W.Va.Code §§ 44–2–2, 44–2–4 (1982). We do not believe that requiring adherence to such a standard will be so burdensome or impracticable as to warrant reliance on publication notice alone.

In analogous situations we have rejected similar arguments that a pressing need to proceed expeditiously justifies less than actual notice. For example, while we have recognized that in the bankruptcy context there is a need for prompt administration of claims, *United Savings Assn. of Texas*

v. Timbers of Inwood Forest Assoc., Ltd., 484 U.S. ——, ——, 108 S.Ct. 626, ——, 98 L.Ed.2d 740 (1988), we also have required actual notice in bankruptcy proceedings. *Bank of Marin v. England*, 385 U.S. 99, 87 S.Ct. 274, 17 L.Ed.2d 197 (1966); *City of New York v. New York, N.H. & H.R. Co.*, *supra*. See also *Mullane v. Central Hanover Bank & Trust Co.*, *supra*, 339 U.S., at 318–319, 70 S.Ct., at 659 (trust proceedings). Probate proceedings are not so different in kind that a different result is required here.

Whether appellant's identity as a creditor was known or reasonably ascertainable by appellee cannot be answered on this record. Neither the Oklahoma Supreme Court nor the Court of Appeals nor the District Court considered the question. Appellee of course was aware that her husband endured a long stay at St. John Medical Center, but it is not clear that this awareness translates into a knowledge of appellant's claim. We therefore must remand the case for further proceedings to determine whether "reasonably diligent efforts," *Mennonite*, *supra*, 462 U.S., at 798, n. 4, 103 S.Ct., at 2711, n. 4, would have identified appellant and uncovered its claim. If appellant's identity was known or "reasonably ascertainable," then termination of appellant's claim without actual notice violated due process.

IV

We hold that Oklahoma's nonclaim statute is not a self-executing statute of limitations. Rather, the statute operates in connection with Oklahoma's probate proceedings to "adversely affect" appellant's property interest. Thus, if appellant's identity as a creditor was known or "reasonably ascertainable," then the Due Process Clause requires that appellant be given "[n]otice by mail or other means as certain to ensure actual notice." *Mennonite*, *supra*, at 800, 103 S.Ct., at 2712. Accordingly, the judgment of the Oklahoma Supreme Court is reversed and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Justice BLACKMUN concurs in the result.

Chief Justice REHNQUIST dissenting.

In *Texaco, Inc. v. Short*, 454 U.S. 516, 102 S.Ct. 781, 70 L.Ed.2d 738 (1982), the Court upheld against challenge under the Due Process Clause an Indiana statute providing that severed mineral interests which had not been used for a period of 20 years lapsed and reverted to the surface owner unless the mineral owner filed a statement of claim in the appropriate county office. In the present case Oklahoma has enacted a statute providing that a contractual claim against a decedent's estate is barred if not presented as a claim within two months of the publication of notice advising creditors of the commencement of probate proceedings. The Court holds the Oklahoma statute unconstitutional.

Obviously there is a great difference between the 20-year time limit in the Indiana statute and the 2-month time limit in the Oklahoma statute, but the Court does not rest the constitutional distinction between the cases on this fact. Instead, the constitutional distinction is premised on the absence in *Texaco, Inc.*, of the "significant state action" present in this case. In the words of the Court:

> "The nonclaim statute becomes operative only after probate proceedings have been commenced in state court. The court must appoint the executor or executrix before notice, which triggers the time bar, can be given. Only after this court appointment is made does the statute provide for any notice; § 331 directs the executor or executrix to publish notice "immediately" after appointment." *Ante*, at 1345–1346.

Just why the due process implications of these two cases should turn upon the "activity" of the Oklahoma Probate Court is

not made clear. Surely from the point of view of the claimant—for whom, after all, the Due Process Clause is designed to benefit—the difference between having the time bar to his claim activated by a notice published by a court-appointed executor, as it was here, and having the time bar activated by acquisition of the mineral interest, as it was in Indiana, makes little if any difference.

The owner of a mineral interest in Indiana who neither made any use of it for 20 years nor filed a statement of claim, would lose a quiet title action brought in the Indiana courts against him by the surface owner because those courts would apply the 20-year statute of limitations. The petitioner in the present case lost a suit in the Oklahoma courts because those courts applied the 2-month statute of limitations contained in the Oklahoma probate statute. Why there is "state action" in the latter case, but not in the former, remains a mystery which is in no way elucidated by the court's opinion. The factual differences which the court points out, showing that the probate court is "intimately involved" in the application of the Oklahoma nonclaim statute, seem to me trivial.

Probate proceedings have been traditionally uncontested and administrative, designed to transfer assets from someone who has died to his successors. Before making these transfers, probate codes universally require that the estate settle the debts of the decedent, and to do this it is necessary that claims against the estate be marshaled and proved. *Ante*, at 1347. Once the debts of the estate are paid, the necessary steps can be taken to distribute the remainder of the property.

Occasionally there may be a disputed claim against the estate, which is then in most jurisdictions tried like any other civil suit. Occasionally there may be a dispute over the validity of the will, with a resultant will contest. Occasionally there may be objections to the account of the executor or the administrator, which are then in most jurisdictions heard and decided by the probate court. But by and large, the typical probate proceeding—and the one involved in the instant case seems to have followed that pattern—is uncontested, and the publication of notice to creditors simply shortens the otherwise applicable statute of limitations.

The "intimate involvement" of the Probate Court in the present case was entirely of an administrative nature.

Would this Court have struck down the Indiana mineral lapse statute involved in *Texaco, Inc.*, if that statute had provided—as an *additional* protection to mineral owners—that a state official should publish notice to all mineral owners of the effect of the operation of the lapse statute? I find it difficult to believe that would be the case, and yet the thrust of the Court's reasoning today points in that direction. Virtually meaningless state involvement, or lack of it, rather than the effect of the statute in question on the rights of the party whose claim is cut off, is held dispositive.

The Court observes that in Oklahoma, it is the court-ordered publication of notice that triggers the running of the statute of limitations. This judicial involvement, the Court concludes, is inconsistent with the "self executing feature," of the time bar in *Texaco, Inc. Ante*, at 1346. This reading of the term "self executing" is, I believe, out of context and contrary to common sense. That term refers only to the absence of a judicial or other determination that *itself* extinguishes the claimant's rights. This is made clear by the *Texaco, Inc.*, Court's juxtaposition of "the self executing feature of the [Indiana] statute and a subsequent judicial determination that a particular lapse did in fact occur." 454 U.S., at 533, 102 S.Ct., at 794. Certainly the Oklahoma provision is more like the former than the latter, and there is no reason to conclude that the perfunctory administrative involvement of the Oklahoma probate court triggers a greater level of due process protection.

Reversed.

Justice O'Connor did not participate.

1. Statutes ⇐54

Test for federal preemption of Puerto Rico law is same as test under supremacy clause for preemption of law of state. U.S. C.A. Const. Art. 6, cl. 2.

2. Statutes ⇐54

War and National Emergency ⇐103, 302

Congress' passage and subsequent repeal of comprehensive federal statutes providing for allocation and price controls on petroleum products did not manifest congressional intent to preempt gasoline price regulation by Commonwealth of Puerto Rico in favor of free market control. Emergency Petroleum Allocation Act of 1973, § 2 et seq., as amended, 15 U.S.C.A. § 751 et seq.; U.S.C.A. Const. Art. 6, cl. 2.

3. States ⇐18.3

Clear and manifest preemptive purpose is always required, before federal legislation can be found to supersede historic police power of states. U.S.C.A. Const. Art. 6, cl. 2.

4. States ⇐18.3

There can be no federal preemption in vacuo, without constitutional text or federal statute to assert. U.S.C.A. Const. Art. 6, cl. 2.

5. States ⇐18.7

When comprehensive federal scheme intentionally leaves portion of regulated field without controls, then preemptive inference can be drawn—not from federal government's inaction alone, but from its inaction joined with action. U.S.C.A. Const. Art. 6, cl. 2.

Syllabus *

In 1973, Congress passed the Emergency Petroleum Allocation Act (EPAA),

* porter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*